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December 29, 1983

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Fred Wendorf, PhD.  
Chairman  
Texas Antiquities Committee  
P. O. Box 12276, Capitol Station  
Austin, Texas 78711

Opinion No. JM-104

Re: Effect of designation as a  
state archaeological landmark

Dear Dr. Wendorf:

You ask for clarification of the effect of the designation of real property owned by a political subdivision to be a state archaeological landmark under the Antiquities Code, chapter 191 of the Natural Resources Code. You wish to know whether designation of a specific piece of real property owned by an independent school district requires the execution and delivery of a deed to the Texas Antiquities Committee.

Section 191.092(a) states that

sites, objects, buildings, artifacts, implements, and locations of historical, archaeological, scientific, or educational interest, including those pertaining to prehistoric and historical American Indians or aboriginal campsites, dwellings, and habitation sites, their artifacts and implements of culture, as well as archaeological sites of every character that are located in, on, or under the surface of any land belonging to the State of Texas or to any county, city, or political subdivision of the state are state archaeological landmarks. (Emphasis added).

Section 191.093 provides that

landmarks under . . . 191.092 of this code are the sole property of the State of Texas and may not be taken, altered, damaged, destroyed, salvaged, or excavated without a contract with or permit from the committee. (Emphasis added).

Section 191.002 declares it to be

the public policy . . . of the State of Texas to locate, protect, and preserve all . . . buildings . . . and locations of historical, archaeological, educational, or scientific interest . . . .

Section 191.051(b)(5) reiterates that it is the responsibility of the Antiquities Committee to "protect and preserve the archaeological resources of Texas." We do not address any constitutional question regarding the declaration that municipal property is the sole property of the state of Texas.

You state that the Texas Antiquities Committee interprets these provisions as limiting its jurisdiction over properties designated as state archaeological landmarks to the protection and preservation of their value as such. We agree with your interpretation of these provisions.

It is well recognized that the legislature may exercise authority over property belonging to the state of Texas or to any county, city, or political subdivision of the state, subject only to constitutional restraints. Greene v. Robison, 8 S.W.2d 655, 659 (Tex. 1928); Houston v. Gonzales Independent School District, 229 S.W. 467, 468 (Tex. 1921); Reese v. Cobb, 135 S.W. 220, 224 (Tex. Civ. App. - 1911, no writ); Weekes v. Galveston, 51 S.W. 544, 546-547 (Tex. Civ. App. - 1899, writ ref'd). The constitutional limitations on the legislature's control of property owned by municipal and quasi-municipal corporations, such as school districts, were defined in Love v. City of Dallas, 40 S.W.2d 20, 27 (Tex. 1931), where it was said that the public interest in municipal property acquired for its benefit did not prevent the legislature from controlling or disposing of property without the consent of the local governmental body so long as such was not done in contravention of the trust. See also City of Victoria v. Victoria County, 101 S.W. 190, 193 (Tex. 1907); Texas Antiquities Committee v. Dallas County Community College District, 554 S.W.2d 924, 930-931.

The Antiquities Committee view that its governing statute requires it to protect and preserve the value of state archaeological landmarks while the deed of ownership remains with the municipal corporation holding it in trust for the public is consonant with this principle. You advise us that designation of about five hundred state archaeological landmarks since 1977 has never involved a deed transferring ownership to the state. Thus, the committee's administrative construction of the ambiguous sections 191.092(a) and 191.093 supports the conclusion that such property is appropriately retained by the municipal corporation while the Antiquities Committee becomes responsible for the preservation of its value as a state archaeological landmark. Roy v. Schneider, 221 S.W. 880, 885 (Tex.

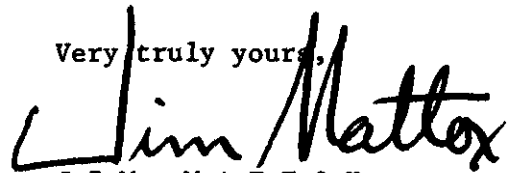
1920); Stanford v. Butler, 181 S.W.2d 269, 273-274 (Tex. 1944). The Antiquities Code, originally passed in 1969, was amended in 1981 without major change. Consequently, we believe that it may be presumed that the Antiquities Committee's interpretation of the code meets with legislative approval. Calvert v. Houston Lighting & Power Co., 369 S.W.2d 502, 509-510 (Tex. Civ. App. - Austin 1963, writ ref'd n.r.e.); Railroad Commission of Texas v. Texas & New Orleans Railroad Co., 42 S.W.2d 1091, 1097-98 (Tex. Civ. App. - Austin 1931, writ ref'd).

It follows that the Antiquities Code does not require a deed transfer of real property designated as a state archaeological landmark or remove it from the management, use, and control of cities, counties, or political subdivisions by which they are held for public use and benefit. However, the committee's custodial authority supersedes other management and usage rights to the extent that the latter would conflict or interfere with the committee's legislatively mandated duty to protect and preserve and a landmark's "archaeological" value. Therefore, we conclude that the committee's interpretation of 191.092(a) and 191.093 is a reasonable construction of these statutes absent contrary legislative action and any evidence that such construction is erroneous or unsound. Shaw v. Strong, 96 S.W.2d 276 (Tex. 1936); Koy v. Schneider, 221 S.W. 880 (Tex. 1920).

#### S U M M A R Y

Where sections 191.092(a) and 191.093 of the Natural Resources Code have been uniformly construed by those charged with their enforcement to mean that no transfer of deed is required when real property owned by a county, city, or other political subdivision is designated a state archaeological landmark, this construction is deemed effective absent legislative action to the contrary or evidence that the construction given is erroneous or unsound.

Very truly yours,



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